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MONIQUE QUILEN

2013 MAR 14 A 10:09
RICHARD W. STRICKING
CLERK OF THE NORTHERN DISTRICT COURT
OF CALIFORNIA
[Handwritten signatures over stamp]

7
8 **UNITED STATES DISTRICT COURT**
9
10 **NORTHERN DISTRICT OF CALIFORNIA** **LB**

11 MONIQUE QUILEN,
12 Plaintiff,

13 vs.

14 PORTFOLIO RECOVERY
ASSOCIATES, LLC; and DOES 1 to
15 10, inclusive,

16 Defendants.

Case No.: **C 13 1146**
COMPLAINT AND DEMAND FOR
JURY TRIAL
(Unlawful Debt Collection Practices)
Demand Does Not Exceed \$10,000

17
18 **COMPLAINT**

19
20 **INTRODUCTION**

21 1. Plaintiff, MONIQUE QUILEN brings this action to secure redress
from unlawful credit and collection practices engaged in by Defendant
22
23 PORTFOLIO RECOVERY ASSOCIATES, LLC (hereinafter also referred to as
24 “PORTFOLIO” or “Defendant”). Plaintiff alleges violations of the Fair Debt
25 Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”).

1
VENUE AND JURISDICTION

2 2. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA) and 28
3 U.S.C. §§1331, 1337 and 1367.

4 3. Venue and personal jurisdiction in this District are proper because:
5
6 a. Defendant's collection communications were received by Plaintiff
7 within this District;
8
9 b. Defendant does or transacts business within this District.

10
PARTIES

11 4. Plaintiff MONIQUE QUILLEN is an adult individual who resides in
12 Clearlake, Lake County, California and is a "consumer" as defined by the FDCPA,
13 15 U.S.C. § 1692a(3).

14 5. On information and belief, Defendant PORTFOLIO maintains its
15 principal place of business at 120 Corporate Boulevard, Norfolk, Virginia 23502,
16 and does business throughout the country, including in California in this district.

17 6. At all relevant times herein, Defendant PORTFOLIO is a company
18 engaged, by use of the mails and telephone, in the business of collecting a debt
19 from Plaintiff which qualifies as a "debt," as defined by 15 U.S.C. §1692a(5).
20
21 Defendant regularly attempts to collect debts alleged to be due another, and
22 therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6).
23
24
25

1
FACTS

2 7. Defendant is attempting to collect from Plaintiff an alleged debt
3 incurred for personal, family or household purposes and not for business purposes.

4 8. Within the last year, Defendant constantly and continuously called
5 Plaintiff from telephone numbers 847-994-2557, 757-275-8578, 847-994-2555,
6 and 847-994-2553 with the intent to annoy and harass her into paying an alleged
7 debt, and does succeed in annoying and harassing her.

8 9. Defendant failed to identify itself as a debt collector in subsequent
9 communications by telephone.

10 10. Defendant calls and fails to leave any affirmative messages on
11 Plaintiff's voicemail, and therefore fails to meaningfully disclose its identity to
12 Plaintiff.

13 11. Defendant engaged in false and deceptive means in attempting to
14 collect a debt by failing to identify itself as a debt collector in subsequent
15 communications.

16
COUNT I – FDCPA

17 12. Plaintiff incorporates paragraphs 1 - 11.

18 13. Defendant thereby violated the following provisions of the FDCPA:

19 i) 15 U.S.C. §1692d(5);

20 ii) 15 U.S.C. §1692d(6);

iii) 15 U.S.C. §1692e(10);

vi) 15 U.S.C. §1692e(11);

14. Sections 1692d(5) and d(6) state in pertinent part that:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

• • •

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

•

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity

15. Sections 1692 e(10) and e(11) state in pertinent part that:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

•

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

COUNT II – RFDCPA

16. Plaintiff incorporates paragraphs 1 - 15.

17. Defendant thereby violated the following provisions of the RFDCPA:

- 1 i) Cal. Civ. Code § 1788.11(b);
- 2 ii) Cal. Civ. Code § 1788.11(d);
- 3 iii) Cal. Civ. Code § 1788.11(e); and
- 4 iv) Cal. Civ. Code § 1788.17.
- 5
- 6

7 18. Sections 1788.11 (b), (d) and (e) state in pertinent part that:

8 **1788.11. No debt collector shall collect or attempt to collect a
9 consumer debt by means of the following practices:**

10 **...**
11 **(b) Placing telephone calls without disclosure of the caller's
12 identity, provided that an employee of a licensed collection agency
13 may identify himself by using his registered alias name as long as he
14 correctly identifies the agency he represents;**

15 **...**
16 **(d) Causing a telephone to ring repeatedly or continuously to
17 annoy the person called; or**

18 **...**
19 **(e) Communicating, by telephone or in person, with the debtor with
20 such frequency as to be unreasonable and to constitute an harassment
21 to the debtor under the circumstances.**

22 19. Sections 1788.17 states in pertinent part as follows:

23 **1788.17. Notwithstanding any other provision of this title, every
24 debt collector collecting or attempting to collect a consumer debt
25 shall comply with the provisions of Sections 1692b to 1692j,
26 inclusive, of, and shall be subject to the remedies in Section 1692k
27 of, Title 15 of the United States Code. However, subsection (11) of
28 Section 1692e and Section 1692g shall not apply to any person
29 specified in paragraphs (A) and (B) of subsection (6) of Section
30 1692a of Title 15 of the United States Code or that person's
31 principal. The references to federal codes in this section refer to
32 those codes as they read January 1, 2001.**

1
PRAYER FOR RELIEF

2 WHEREFORE, the Court should enter judgment in favor of Plaintiff and
3 against Defendant for:

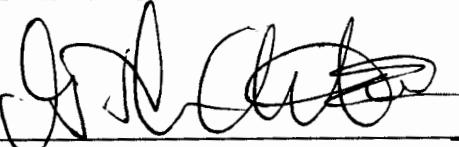
- 4 (1) Statutory and actual damages;
5 (2) Attorney's fees, litigation expenses and costs of suit;
6 (3) Such other and further relief as the Court deems proper.

7 RESPECTFULLY SUBMITTED,

8 DATED: March 8, 2013

PRICE LAW GROUP APC

9 By: _____
10


11 G. Thomas Martin, III
12 Attorney for Plaintiff

DEMAND FOR JURY TRIAL

13 PLEASE TAKE NOTICE that Plaintiff, MONIQUE QUILLEN demands
14 trial by jury in this action.
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JS 44 (Rev. 12-12) and rev (1-15-13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MONIQUE QUILLEN

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

LAKE

(c) Attorneys (Firm Name, Address, and Telephone Number)

E. THOMAS MARTIN III #218456
PRICE LAW GROUP, APC
15760 VENTURA BLVD., #100 ENCLAVE, CA 91436**DEFENDANTS**PORTFOLIO RECOVERY ASSOCIATES,
LLC AND DOES 1 TO 10, INCLUSIVE

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability | PROPERTY RIGHTS | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Murine | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 370 Other Fraud | LABOR | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 861 HIA (1951) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 190 Other Contract | | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 850 Securities/Commodities Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 196 Franchise | | | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 891 Agricultural Acts |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | SOCIAL SECURITY | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 440 Other Civil Rights | Habeas Corpus: | <input type="checkbox"/> 867 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 870 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 510 Motions to Vacate Sentence | | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 530 General | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 535 Death Penalty | | |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | Other: | | |
| | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 540 Mandamus & Other | | |
| | | <input type="checkbox"/> 550 Civil Rights | | |
| | | <input type="checkbox"/> 555 Prison Condition | | |
| | | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |
| | | | FEDERAL TAX SUITS | |
| | | | <input type="checkbox"/> 462 Naturalization Application | |
| | | | <input type="checkbox"/> 465 Other Immigration Actions | |

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | |
|------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692

VI. CAUSE OF ACTION

Brief description of cause:

UNLAWFUL DEBT COLLECTION PRACTICES

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.C.P.

DEMANDS

ACCORDING TO PROOF

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

 SAN FRANCISCO/OAKLAND SAN JOSE EUREKA